

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**NOTICE OF  
MOTION**

-against-

08 Cr. 114 (WHP)

Jose Navas,

Defendant.

-----X

PLEASE TAKE NOTICE, that upon the annexed affidavit of PATRICK JOYCE, Esq., duly sworn to on January 29, 2009 the annexed Memorandum of Law, the annexed exhibits and the prior proceedings in this case, the undersigned will move this Court before the Hon. William H. Pauley, United States District Judge, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, Rules 801 and 806 of the Federal Rules of Evidence, 18 U.S.C. § 3504, and the inherent supervisory power of the Court for issuance of the following Orders.

1. Suppressing seized property on the ground that such evidence was obtained in violation of the defendant's rights under the Fourth Amendment to the United States Constitution and relative case law. In the alternative, defendant requests holding of a hearing at which the issues raised by the manner in which the seizure was effectuated may be litigated.

2. Suppressing evidence of statements made by Mr. Navas on November 4, 2008. These statements were obtained at a time when Mr. Navas was arrested on less than probable cause. Accordingly, these statements should be suppressed pursuant to the Fourth Amendment to the United States Constitution. In the alternative, defendant requests holding of a hearing at which the issues raised by the manner in which the statements were obtained may be litigated.

3. Granting of Suppression of any evidence seized as a result of the Government's obtaining cell site information pertaining to Mr. Navas as use of this information violated Mr. Navas' rights as guaranteed by the Fourth Amendment to the United States Constitution.

4. Granting reasonable time for the defendant to make such additional motions as are predicated upon the government's response to these motions, the Court's decision as to the instant motions, and any further developments in this case.

5. Granting such additional relief as the Court deems just and proper, or as may become appropriate as a result of information disclosed pursuant to this motion.

No previous application for the relief sought herein has been made to any Court.

DATED: NEW YORK, NEW YORK  
January 28, 2009

TO:

AUSA Telemachus Kasulis  
United States Attorney's Office  
Southern District of New York  
One St. Andrews Plaza  
New York, New York 10007

YOURS, etc.,

PATRICK JOYCE  
70 Lafayette Street  
New York, NY 10013  
212-285-2299

Clerk, of The Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

**AFFIDAVIT IN SUPPORT  
OF MOTION**

-against-

08 Cr. 1144()

Jose Navas,

Defendant.

-----X  
STATE OF NEW YORK       )  
                                  ) ss.:  
COUNTY OF NEW YORK     )

I, Jose Navas being duly sworn, deposes and says:

1. I am the defendant in the above matter.

2. This affidavit is submitted in support of my motion for suppression of my statements and the fruits of the search of my property.

3. In November of 2008 I was driving a tractor trailer in the vicinity of Hunts Point, Bronx, New York. I have a commercial license and have driven products for delivery all across the country. It has been my experience to drive the product to a general vicinity, and then contact the owner's in California. They would then instruct me where to make the delivery, where to store the trailer and where and when I would re-load and drive back to California. During the entire process I am responsible for the tractor/trailer. I retain the keys to the cab and am responsible to return the tractor/trailer to its owner in California.

In November, I was contacted by individuals in California who told me that they wanted me to drive a truck to New York. I was given control of this truck and its contents. I was instructed to contact the owner's once I reached New York.

The trailer was filled with tomatoes. Also located in the trailer was a secret compartment which contained a quantity of narcotics. I originally stopped in New Jersey to receive instructions as to where I was to proceed. I then drove to Hunts Point to deliver the tomatoes and the narcotics. At one dock the remainder of the tomatoes were unloaded. After that I was instructed by the dispatcher in California where to park the trailer overnight. I parked the trailer at 528 Drake Avenue in the Bronx. I then drove the Tractor or cab out of the location.

I was informed by the dispatcher that I would be notified when I should retrieve the trailer.

4. I parked the cab of the truck in the vicinity of a McDonald's located on Garrison Avenue in the Bronx. While waiting at that location the police approached me and placed me under arrest. The police seized items from the cab of the truck. They also drove me back to the warehouse on Drake Avenue. The police did not ask my consent to search inside the warehouse or inside the trailer. The police never asked me if they could open the secret compartment where the narcotics were stored. After

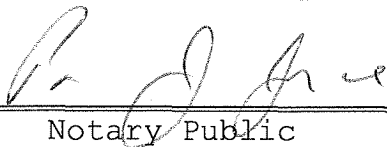
opening the compartment of the trailer the police seized the narcotics which are the subject of this prosecution.

5. After my arrest I made a statement to the police.



Jose Navas

Sworn to before me this  
29th day of January 2009

  
Notary Public

PATRICK J. JOYCE  
Notary Public, State of New York  
No. 02J05039969  
Qualified in New York County  
Commission Expires March 6, 2011

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**AFFIDAVIT**

-against-

08 Cr. 1149 (WHP)

Jose Navas,

Defendant.

-----X

STATE OF NEW YORK       )  
                                  ) ss.:  
COUNTY OF NEW YORK     )

Patrick Joyce, being duly sworn, deposes and says:

1. I am the attorney of record for the defendant, Jose Navas, and I am duly admitted to practice law before this Court.

2. This affidavit is submitted in support of the defendant Navas' motion for omnibus pretrial relief and except when the context shows otherwise, is made upon information and belief.

**I. THE SUPPRESSION OF SEIZED PROPERTY AND STATEMENTS**

3. On the evening of November 4, 2009, Mr. Navas was parked in his Tractor in the Bronx, New York. At that time members of the New York Drug Enforcement Task Force arrested Mr. Navas. Those arresting Mr. Navas did not have probable cause to believe he had committed any crimes, nor did they have reason to believe he was about to commit a crime.

4. Subsequent to this illegal stop, agents seized items from the person of Mr. Navas and the cab of the truck, cell phones, and miscellaneous papers.

5. The seizure of these items was effectuated subsequent to an illegal arrest of Mr. Navas. The defendant did not give consent to police to search the cab or his person.

6. Shortly, thereafter law enforcement transported Mr. Navas to a Drake Avenue warehouse wherein the trailer he was responsible for was parked. Without consent of Mr. Navas, police entered the warehouse. Without consent of Mr. Navas the police then dis-mantled his truck in search of a hidden trap. As a result of this illegal intrusion and without benefit of a search warrant, the police seized a quantity of cocaine from a hidden compartment in the trailer portion of the truck. The defendant moves to suppress the personal items and narcotics which were seized illegally. In the alternative the defendant requests a hearing where the issues raised may be litigated.

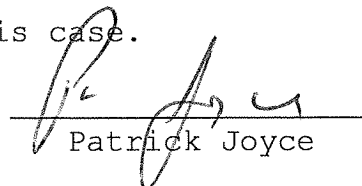
7. Moreover, law enforcement agents questioned Mr. Navas after removing him from his vehicle and detaining him. Mr. Navas responded to the officer's questions. This custodial interrogation occurred at a time when the police had less than probable cause to arrest Mr. Navas.

The defendant moves to suppress these statements, or in the alternative requests a hearing thereon.



**SUPPRESSION OF INFORMATION DISCOVERED OR PROPERTY SEIZED  
AS A RESULT OF THE IMPROPER ISSUANCE OF A CELL SITE WARRANT**

Paragraph seven (7) of the complaint (Attached "A") in this case reveals that agents received "authorization for continuing cell site location information from the Honorable Michael H. Dollinger of the Southern District of New York for the cellular telephone of JOSE NAVAS...". The defendant moves to suppress any information or evidence seized from the issuance of this authorization. Defendant asserts that authorization to track an individual's location via cell site authorization contravenes the protections set forth in the Fourth Amendment to the Constitution. The arrest of Mr. Navas and the seizure of all the evidence in this case stem directly from the Government's illegal use of cell site information. Accordingly, the defendant moves to suppress all the evidence seized in this case.

  
Patrick Joyce

Sworn to before me  
January 29, 2009



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Notary Public  
PEI PEI CHENG  
Notary Public, State of New York  
No. 02CH6064164  
Qualified in Kings County  
Commission Expires September 17, 2009